

# Overtime and Hours of Work

Internal Policy Memorandum 2005-01

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## I. Policy Communications

- A. Employee Communication – It is the policy of the Division of Human Resources that FLSA covered employees will receive compensatory time for overtime worked, and not paid in cash except as otherwise provided in this policy. It is the responsibility of supervisors to consult with and communicate this policy to covered employees as a part of each employee's job offer. All FLSA-covered employees should have a written acknowledgment of this policy on file.
- B. Reporting Concerns – The Division of Human Resources follows the FLSA and all applicable federal and state laws and rules regarding employee compensation. Any employee who believes that a problem exists in regard to hours of work, whether a position is covered or exempt, or any issue related to hours of work and overtime compensation is encouraged to report the issue to their supervisor, manager or Administrator as soon as possible. The Division will take prompt action to correct problems identified and communicate the action to the employee. No employee will be subject to retaliation for reporting a wage and hour concern.

## II. General Requirements

- A. Overtime Defined – Overtime is that time worked that exceeds 40 hours in the state's legally defined work week (beginning 12:01 A.M. Sunday through 12:00 midnight Saturday) and hours worked on a holiday. Overtime work will earn credited state service at the rate of one hour for each hour that the employee actually works.
- B. Time Worked for More than One State Department – The state is considered a single employer for determining the number of hours worked. If an employee works for more than one state department, the employee's combined service will be subject to applicable laws and DHR rules governing overtime.
- C. Travel Time – Travel time between home and the employee's official workstation is a normal incident of employment and not considered hours worked.

Employees required to work away from their assigned reporting location shall have such travel time considered as hours worked.

If an employee is directed as part of his/her job to travel on non-working hours, the employee is eligible for travel time en route. Employees covered by FLSA who travel as part of their job or to training or conferences must receive time and a half for overtime incurred due to such travel.

Time spent traveling by mode of transportation other than commercial airline shall earn compensable time equivalent to time spent in transit via commercial airline if the time is outside normal duty hours. Exceptions to this policy can be made if the Administrator of the Division determines that modes of travel other than commercial airlines are more practical.

Travel time outside of an FLSA exempt-employee's normal work schedule to attend conferences, seminars, association meetings, etc., when the employee requests the travel, shall be credited as work time if required by law or approved by the Administrator.

Work assignments that require an employee to stay out over a weekend or overnight(s) will qualify for expenses but no time will be compensated beyond travel and actual hours worked.

State travel policies are governed by the State Board of Examiners; see their policy #442-50 for more information ([www.sco.state.id.us](http://www.sco.state.id.us)).

- D. Workweek – The workweek for employees of the Division of Human Resources is 12:01 AM Sunday through 12:00 Midnight Saturday.

To avoid overtime accrual, the supervisor may alter the employee's work schedule, within a normal work week, to the extent that the employee may take an equal amount of time off within the same work week (i.e., employee can take four hours off Friday because he/she worked four extra hours on Tuesday of the same workweek). However, an employee's work schedule shall not be adjusted to reduce or avoid compensation of holiday, MDA, sick or military leave taken.

E. Compensation

1. FLSA exempt employees.

- a. Administrative or Professional Exemptions. These employees are eligible to earn compensatory time for overtime worked. (See Idaho Code Sections 67-5302(1) and (27). Employees shall be allowed compensatory time off from duty for overtime worked. Such compensatory time shall be earned on a one hour for each hour worked basis. These employees are not eligible for cash compensation for overtime unless cash payment is specifically authorized by the State Board of Examiners for overtime accumulated during unusual or emergency situations [Section 67-5329(3)]. Supervisors may request cash compensation for overtime for an individual in a highly unusual or emergency situation via the Division Administrator, who will determine if the request goes forward.
- b. Employees designated as "executive" may earn comp time, up to 240 hours maximum, but are ineligible for cash compensation. See Idaho Code Sections 67-5329(2) and 5302(12).

2. FLSA Covered employees. These employees are eligible for cash or compensatory time off for overtime work. They shall receive cash compensation or compensatory time off in accordance with Idaho Code Section 67-5329(3) at one and one-half times their regular hourly rate of pay for all overtime hours worked and all hours worked on a holiday or the official day observed in lieu of the holiday. The requirement to compensate (cash compensation or compensatory time) for overtime worked may not be waived by an agreement between the employee and the supervisor. Although it is Division policy that advance approval be given before an employee may work overtime, any overtime that is worked by a covered employee must be compensated. All comp time

accumulated that exceeds 240 hours must be paid in cash. Comp time accrued in a prior 6 month period must also be paid (see IV. B.) in all other situations, the Administrator will determine when cash compensation is allowed for covered overtime work.

### **III. Specific Requirements**

- A. Time Reporting – All hours worked must be recorded on the employee's time sheet, and approved by the authorizing supervisor.
1. FLSA Covered employees. Great care must be taken to ensure covered employees do not eat lunch at their desks and continue to work or be interrupted by work requests, phone calls, etc. If such work is expected or permitted by the supervisor, the entire lunch break must be considered work time.
  2. FLSA Exempt employees. More flexibility in scheduling occurs with exempt employees, but all time worked must be reported. If lunch breaks are interrupted, only actual time worked is reported.
  3. No Volunteer Duty. Employees may not volunteer their time in this or other state agencies if they would be performing work similar to their primary state job.
  4. Working "off the clock" prohibited. Employees and their supervisors who permit or engage in working without reporting such time may be subject to discipline, up to and including dismissal.
- B. Approval – All overtime must be approved by the employee's immediate supervisor in advance. All overtime worked will be documented on the employee's time sheet and approved by the supervisor before being compensated in cash or by compensatory time off. Supervisors and employees should work cooperatively to select dates to discharge accrued compensatory time or earned administrative leave which will least interfere with normal Division services. Employee preference should be supported if possible.
- C. Limitation – No employee will accrue more than forty (40) hours of compensatory time without the prior written approval of their supervisor. Even when approved, no employee will be allowed to accrue more than 240 hours. Supervisors will be held accountable for managing these accruals.
- D. Sequence --The sequence leave will be taken is (1) Earned Administrative Leave, (2) Compensatory Leave, (3) Vacation Leave, provided this does not cause the employee to lose vacation leave due to the maximum accrual limits.

### **IV. Discharge of Accrued Compensatory Time/EAL**

- A. Administrative, Executive, and Professional Employees: With prior approval of his/her supervisor, an employee may take accrued compensatory time off. Accumulated compensatory time cannot be transferred from the Division to another department within the state. If comp time is not used before transfer or separation from state employment, it is forfeited. Compensatory time lost at the time of transfer or separation cannot be reinstated at a later date.

- B. Covered Employees: Accrued compensatory time must be taken off before vacation leave can be used, as long as the employee does not lose vacation time due to the maximum accrual provision of Idaho Code Section 67-5335. In addition, compensatory time should usually be taken before leave without pay. Compensatory time which has been earned during any one-half fiscal year but not taken by the end of the succeeding one-half fiscal year will be paid in cash on the first payroll following the close of such fiscal year. Accrued compensatory time must be paid in cash at one and one-half times the employee's final regular hourly rate or the average regular hourly rate received during the last three years of employment, whichever is greater, at the time of the transfer to another agency or upon separation from state service.
- C. Earned Administrative Leave (EAL) – In any week an employee worked less than 40 hours but would be compensated for more than forty (40) hours due to holiday time off, MDA, sick or military leave taken, EAL will be used. Since the employee did not work more than 40 hours, they are not entitled to time and a half. EAL may be earned by Exempt and Covered employees. It is always earned at straight time, and if not used, will be paid in cash to the employee (whether Exempt or Covered) upon separation from state employment.

1. Accrual: EAL is accrued on a one hour for one hour worked basis for all employees.
2. Discharge: EAL may be compensated at the discretion of the Administrator either by cash at the employee's regular hourly rate as regular time or the accrual of EAL for future time off.

Accrued EAL must be used before accrued compensatory time and vacation leave can be used, provided this action does not cause the employee to lose vacation leave due to the maximum accrual limits.

EAL balances will be paid upon transfer to another division or state department or upon separation from state service.

3. Restrictions: At DHR, EAL accrual is limited to forty (40) hours. Supervisors must obtain the Administrator's approval prior to allowing work that results in more than a 40 hour EAL balance.

## **V. Call Back – Unscheduled Return to Work**

- A. Call Back – Employees who are called back to, and report to work, will receive up to two (2) hours of Administrative Leave regardless if the employee is required to work or not. Actual time worked on call back shall replace Administrative Leave and be coded as regular or overtime work as appropriate.